HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Misc. Application No.360 of 2006

1. Sanjeev Kumar Tandon
   S/o late Shri D.N. Tandon
2. Rajeev Kumar Tandon
   S/o late Shri D.N. Tandon
3. Gopal Tandon
   S/o late Shri Gauri Shankar Tandon
4. Smt. Beena Tandon
   W/o late Shri D. N. Tandon
5. Smt. Kiran Tandon
   W/o Shri Gopal Tandon
   All R/o Mandi Bans
   Near Dr. J.S.Kothiwal Cliinc
   Moradabad
   District Moradabad, U.P. .....Applicants

Versus

1. State of Uttaranchal
2. Smt. Aradhana Tandon
   D/o late Shri R.K. Tandon
   R/o House No.202, Old Awas Vikas
   Kasba Kashipur
   District U.S. Nagar .....Respondents

Sri Lokendra Dobhal learned counsel for the applicants.
Sri Amit Bhatt and Sri Rajeev Mohan learned counsel A.G.A.

Hon'ble J. C. S. Rawat, J.

1. The petition under section 482 Cr.P.C. has been filed for quashing the chargesheet No.59/2006 and proceedings in criminal case No.655/2005 State Vs. Smt. Beena Tandon & others under sections 498-A, 506 IPC and 3/4 Dowry Prohibition Act pending in the court of Judicial Magistrate, Kashipur, District U.S. Nagar.

2. Brief facts of the case are that the respondent No.2 filed an application under section 156(3) Cr.P.C. in the court of Judicial Magistrate, Kashipur for registration of the first information report against the applicant No. 1 and his family members alleging therein that the

applicants were demanding dowry of Rs.2 lakh and a Maruti car. When the said demand was not fulfilled, the applicants turned out the respondent No.2 from their house. It was further alleged that on 4.1.2006 the applicant No.1 alongwith his other family members came to the house of one-Himanshu Bhardwaj for compromise and again demanded the dowry from the respondent No.2. When her brother shown his inability to fulfill the demand of dowry, the applicants threatened and abused the respondent No.2 and her brother. Thereafter, the police investigated the matter and submitted the chargesheet. The learned Magistrate took cognizance against the applicants. Feeling aggrieved by this, the applicants preferred the present petition.

3. Learned counsel for the applicants contended that in the first week of January 2006 Smt. Munni Devi Tandon-grandmother of applicant No.1 was seriously ill and therefore, the entire family members of applicant No.1 were busy in treatment of Smt. Munni Devi Tandon, who died on 5.1.2006. It was contended that considering the above facts the allegations made in the FIR with regard to the dated of 4.1.2006 are improbable. Learned counsel for the applicants has also filed the copy of the medical prescriptions and the death report of Smt. Munni Devi. It was further contended that the applicant No.1 got opened two bank accounts in the name of respondent No.2 in Moradabad Branch. The applicant No.1 used to deposit the amount in the account of respondent No.2, but the respondent No.2 withdrew the whole amount from her account and gave it to her parents. The applicant No.2 was also present in the bank and his attendance slip has also been filed before the Court. It was further contended that the applicants were not present at the relevant time. In

other words, the applicants have taken a plea of 'alibi'. It was also contended that the applicant No.2 was living in a separate house and as such his presence at the spot is doubtful. Learned AGA refuted the contention. The aforesaid pleas are the subject matter of evidence. These pleas can be raised by the applicants during trial. The trial court can only evaluate the evidence of the applicants. Now, it is to be decided whether the version of the applicants is correct or the version of the private respondent is correct. It is a question of fact, which has to be decided during the trial. This court cannot evaluate the disputed facts of the case. This Court cannot decide as to whether the evidence is reliable or not. It has been held by the Hon'ble Apex Court in M. Narayandas Vs. State of Karnataka 2004 Cri.L.J. p/822 that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprise. It has also been held in State of Karnataka Vs. M. Devemdrappa & another 2002(2) SBR p/151 that while exercising jurisdiction under section 482 Cr.P.C., the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trial court.

4. It is not permissible for the High Court to look into materials, the acceptability of which is essentially a matter of trial. While exercising jurisdiction under

section 482 Cr.P.C., it is not possible for this Court to act as if it is a trial court. {State of M.P. Vs. Awadh Kishore Gupta and others SCC (Cri) 2004 p/353}.

5. In view of the above, the petition lacks merit and is dismissed. All the pending miscellaneous application(s) in this case, if any, shall stand disposed of accordingly.

(J.C. S. Rawat, J.)

Dated 24.05.2006

LSR